Appendix 9A

Longhorn Response to Questions Regarding the No-Action Alternative

Jenkens & Gilchrist

A PROFESSIONAL CORPORATION

MEMORANDUM

To: Bob Davis, Radian ***VIA E-MAIL and TELECOPY***

From: Barry Cannaday

Date: July 21, 1999

Re: Response to Questions for Longhorn regarding the No-Action Alternative in the Longhorn EA

The following responses are provided to the questions set out in your memorandum dated July 20, 1999 regarding the No-Action Alternative. Because Longhorn has had very little time to provide the following responses, it reserves the right to provide supplemental and/or additional responses as further information is developed. Subject to the foregoing, the following specific responses are provided to your questions:

1. From a regulatory/permitting standpoint, what would Longhorn need to do to legally resume crude oil shipments from Crane to Houston area?

ANSWER: Longhorn currently has a T-4 Permit (Permit No. 05431) with the Texas Railroad Commission (which the Railroad Commission refers to as a "Registration") under which the Railroad Commission has certified that Longhorn has complied with rule 70 of the Commission Rules and Regulations governing pipelines in accordance with Article 6018 et seq. R.C.S. to operate a hazardous liquids pipeline from Crane to Houston. All that would be required to change the service from refined products to crude oil products would be an amendment of the existing Permit/Registration. During the period of time that Exxon Pipeline Company operated the line as a crude products line, it had in place an OPA '90 facility response plan for crude oil service from Crane to Houston. That facility's response plan would have to be refiled with the Department of Transportation.

2. Was the Crane-to-Baytown Segment ever "abandoned" or "surplused"?

ANSWER: The Crane to Baytown segment was never abandoned or surplused. At all periods of time since the line was last used for crude oil service, first Exxon Pipeline Company and then Longhorn, intended to return this line to service. The concept that

either Exxon or Longhorn ever intended to "abandon" or "surplus" this line makes absolutely no sense in light of all of the facts surrounding this transaction. In this regard, see paragraph 6 of the Affidavit of William C. Lumpkin which is attached hereto.

3. Has maintenance per DOT 195 continued since operation of the line for crude oil shipments ceased?

ANSWER: Please refer to the Affidavit of William C. Lumpkin (RAD 23798). After the line ceased to be used for crude oil service, it was continually maintained by Exxon Pipeline Company, during all periods of time Exxon was responsible for maintaining the pipeline, in a manner intended to comply with all state and federal laws and regulations, including DOT regulations. Subsequent to the termination of Exxon's role in maintaining the line, Longhorn has endeavored, in good faith, to maintain the line in compliance with all state and federal laws and regulations, including DOT regulations.

4. Has the IRS treatment of this asset for tax purposes been changed in any way since its operation as a crude oil pipeline? What is its current status for purposes of IRS reporting? Please explain.

ANSWER: Between the time that Exxon last used this line for crude oil service and the time the line was sold/contributed by Exxon to Longhorn, the tax treatment of the pipeline did not change. Subsequent to Longhorn's acquisition of the line, Longhorn has treated the line as a business asset for income tax purposes.

5. Please provide the approximate volume of crude oil shipments through the Crane-to-Baytown EPC line for <u>each</u> of its last ten years of operation (1986-95) and its highest three years of operation.

ANSWER: Because of the manner in which Exxon Pipeline Company maintained its records relating to shipments of crude oil on this line, it is not easy to extract information about annual volumes shipped through the pipeline. For example, different volumes entered the line at various points along the line. How are those volumes calculated for purposes of your question? Nevertheless, the following volumes are provided as Exxon Pipeline Company's good faith estimate of the volumes shipped through the pipeline during the 10 year time period specified:

1986: 43,800,000 barrels
1987: 41,829,000 barrels

1988: 36,938,000 barrels
1989: 37,522,000 barrels
1990: 31,098,000 barrels
1991: 26,353,000 barrels
1992: 19,491,000 barrels
1993: 24,820,000 barrels
1994: 30,879,000 barrels
1995: 26,827,500 barrels (annualized)

6. In the Affidavit of William C. Lumpkin (RAD 23798), Item 4 begins as follows: In 1993, the Crane to Baytown line was identified as a potential candidate for conversion to a refined products pipe line since west Texas production was declining and there was an available alternative to move crude to the Gulf Coast (Rancho Pipe Line).

In brief, why should resumption of crude oil shipments from Crane-to-Houston be considered the most likely "No-Action Alternative"?

ANSWER: The resumption of crude oil shipments from Crane-to-Houston is the most likely "No-Action Alternative" because, if the pipeline is not used for refined products, use of the pipeline for crude oil service is the next best use of the pipeline. This pipeline is a valuable asset for which significant money has been paid and invested. The concept that it would be abandoned without being put to its next highest and best use makes no economic or logical sense. This pipeline was initially constructed for the purpose transporting crude oil and it has undergone significant improvements which make it a safer pipeline for purposes of shipping crude oil if that next best use of the line is forced upon Longhorn. Although west Texas production has declined, there is still available production and other sources of crude oil that could be shipped on the line at various points between El Paso and Houston and it is even possible that crude oil could be shipped from west to east for other purposes.

Do not hesitate to contact me if you should have any questions concerning the foregoing.

Jenkens & Gilchrist

A PROFESSIONAL CORPORATION

MEMORANDUM

To: Bob Davis, Radian International, LLC

FROM: Barry F. Cannaday

DATE: September 20, 1999

SUBJECT: No Action Alternative

The following responses are provided to the Department of Justice's additional questions related to the "no-action alternative."

1. General Response: As I advised earlier, the concept that Longhorn would spend hundreds of millions of dollars purchasing, refurbishing, constructing and upgrading a pipeline system and then abandon it in the inconceivable event that it was denied the right to use the line for refined products service, defies all human logic and common sense. The management of Longhorn has determined that the "no action alternative" is crude service and it is not the place or function of the Department of Justice to question the legitimate business decisions of Longhorn. Further, the Department of Justice needs to keep in mind that if Longhorn was denied the right to operate its pipeline in refined products service, then the economics involved with evaluating any alternatives would ignore "sunk costs". That is, any use of the pipeline system that would generate an acceptable operating profit on a going forward basis would justify its continued use for that purpose as an asset.

2. Specific Responses: The following specific responses are provided to the additional questions posed by the Department of Justice:

   QUESTION 1: The Cannaday memorandum indicated that "[a]lthough west Texas production has declined, there is still available production and other sources of crude oil that could be shipped on the line at various points between El Paso and Houston." Can you provide some additional factual support for this statement?

   ANSWER: The graph attached as Exhibit A details historic crude production from Texas Railroad Comniission Districts 7C, 8 and 8A consolidated with production from the southeastern New Mexico counties Lea, Eddy and Chaves. Crude production from these areas comprises the bulk of the total crude production from the so-called Permian Basin. These volumes represent the total crude supply available for local refineries and for export to refineries located in other regions. Note that although crude volumes have

shown a sharp decline within the last 18 months, a significant portion of that decline represents the shutting in of production and a temporary decline in drilling activities rather than depletion of available reserves since short term crude decline in the region is highly dependent on crude price. Long term overall decline in the region is about 3 percent annually. As can be seen, there is still an abundant supply of crude oil that is available to be shipped from west Texas to the Gulf Coast.

Crude volumes from other areas such as the U.S. West Coast or Alaska can also create demand for crude transportation capacity from west Texas to Houston. The primary link for these volumes from the west is the All American pipeline system.

QUESTION 2: The Cannaday memorandum also indicated that "it is even possible that crude oil could be shipped from east to west for other purposes." Can you further explain or support this statement as well.

ANSWER: The existing Chevron/RHC refinery facilities at El Paso consists of two distinct plant sites with two different owners. These facilities are currently operated as a consolidated unit. Although existing commercial arrangements limit the economic feasibility of expanded operations, it is feasible that Chevron, RHC 6r a future owner of the facilities n-dght elect to significantly expand crude processing capabilities at the facility at some point in time. Longhorn would provide the connection to the vast array of crude grades readily available at the U.S. Gulf Coast. As regional crude supply declines and if expanded operations include more complex processing facilities, shipments of lower quality, imported crude would be required to meet local demand.

QUESTION 3: In the Affidavit of William C. Lumpkin (RAD 23798), Item 4 begins as follows: "In 1993, the Crane to Baytown line was identified as a potential candidate for conversion to a refined products pipeline since west Texas production was declining and there was an available alternative to move crude to the Gulf Coast (Rancho Pipe Line)." Do you have any information supporting the feasibility of resuming crude oil shipments from west Texas to the Gulf Coast despite the availability of the Rancho Pipe Line and any other existing alternative routes?

ANSWER: Although the Rancho Pipe Une is the largest alternative system available for the shipment of crude from west Texas to the Gulf Coast, the capacity of the Rancho system presents some disadvantages as crude volumes in region decline relative to systems like Longhorn with lower throughput capacities. As capacity utilization drops, it will become increasingly difficult to maintain batch integrity throughout the pipeline resulting in a higher degree of degradation of the lighter, sweeter batches moving through the system. Transit times through the system also increase. All this will tend to give Longhorn a competitive edge if the Longhorn system were placed in crude service.

Further, given the fact that the existing Longhorn system has a substantially lower capacity than the Rancho system, the Rancho system is likely to be abandoned sooner due to the higher cost associated with product losses from contamination as well as longer transit times. Finally, Longhorn would, at all times, attempt to provide quality services at a price that would attract crude shippers to use Longhorn in preference to Rancho.

In addition to pipeline operational considerations, several events have favorably impacted the crude supply/demand balance in west Texas for crude shippers since 1993 when Exxon identified the opportunity to convert the Crane to Houston line. In 1997, Mobil sold their 16-inch crude pipeline that operated between Midland and Corsicana. This line had the capacity to move approximately 200,000 barrels per day of west Texas crude east to connect with systems moving crude to refineries located in the Midwestern U.S. This line was subsequently converted to refined products service and is currently operated by Equilon. The sources of crude handled by that line now have to find another outlet and Longhorn could compete for that market if it were in crude oil service..

In March of 1998, Pride Companies, L.P. completed the shutdown of its Abilene, Texas refinery. Closure of the Abilene facility resulted in a drop in crude demand in west Texas of 30,000 to 40,000 barrels per day. Equilon's Odessa refinery has also been idled reducing total regional demand by an additional 30,000 barrels per day.

Other structural changes will also impact the crude supply/demand balance in west Texas in the near ten-n in ways that are favorable to potential crude oil shippers. As a result of the on-going industry consolidation, many companies are seeking to alter their newly combined asset portfolios.

The Total-Fina merger has altered Fina's traditional business strategy as evidenced by the current auction process for the sale of their Southwest Business Group that includes the Amdel pipeline. Amdel has historically moved west Texas crude from Midland to the U.S. Gulf Coast and, more specifically, Fina's Port Arthur refinery. Fina is currently in the process of reconfiguring the Port Arthur facility to integrate its operation with existing petrochemical facilities. This change in operating philosophy will ultimately result in a change in the feedstock requirements for the Port Arthur refinery and a reduction in the regional demand for west Texas crude of approximately 40,000 barrels per day.

Also included in the sale of the Southwest Business Group is the 60,000-barrel-per- day Big Spring refinery. Future operation of the refinery is highly dependent on the result of the auction process and the new owner's strategy for the exploitation of these assets. Closure of the Big Spring facility coupled with the change in operating strategy at the Port Arthur facility could result in an approximately 100,000 barrels per day of incremental west Texas crude requiring transportation to new markets outside of the region.

The proposed merger of BP Amoco and ARCO currently undergoing FTC scrutiny also

presents the opportunity for changes in asset infrastructure in west Texas. Amoco and ARCO both have significant crude pipeline assets in the west Texas area. The Amoco system transports crude from southeastern New Mexico and west Texas to refineries in the midwest. BP has already begun to restructure the combined BP Amoco asset portfolio with the ale of the Belle Chase refinery in the southeast and had identified a targeted reduction of some $3 billion in assets from the combined company in the near future. Other, as yet unidentified divestitures of not only BP Amoco, but also ARCO assets, such as crude producing properties, transportation assets, and refining assets could have a significant impact on the supply, demand and transportation situation in west Texas.

Additionally, structural changes will also evolve from proposed regulatory changes in fuel specifications that may improve the economics for crude oil shippers from the west Texas area. Although the final specifications for permitted sulfur levels are still being debated, it is clear that reductions in overall product sulfur levels will be mandated to begin within the next few years. Substantial capital investments are currently anticipated to meet the new specifications and some regional refiners may elect to shut down facilities rather than make the investments required to achieve compliance.

QUESTION 4: Do you have any other factual information (besides the Cannaday memorandum and the Affidavit of William Lumpkin) (e.g. quantity of crude 6il, other available economic information) which further establishes the practicality and likelihood of the resumption of crude oil shipment as the no-action alternative?

ANSWER: Based on historic crude oil production data (shown in the answer to Question I above), the average crude oil production rate in the Permian Basis has declined from 1, *1* 15,000 to 919,000 barrels per day in the period from January 1993 to June 1999. Therefore, crude supply has declined approximately 200,000 barrels per day during this time. However, during the same period, two large crude pipelines, Exxon (Crane to Houston) and Mobile (Midland to Corsicana), with approximate total crude capacities of 380,000 barrels per day have been removed from crude service which effectively results in a net surplus of available crude for shipment from west Texas.

In addition to the reduction in total cr-ude transportation capacity from west Texas, two regional refineries have shut down since 1997. The Pride Refinery at Abilene shut down in the first quarter of 1998 resulting in an additional 35,000 to 40,000 barrels per day of available supply in the region which could be shipped from west to east. Equilon's Odessa refinery has also been shut down contributing an additional 30,000 barrels per day of available supply to the area.

Longer term, additional demand for export transportation capacity from west Texas may result from the pending regulatory changes associated with the sulfur content in both gasoline and diesel fuels. Although the specifications for sulfur are still being debated, it is clear that reductions in overall product sulfur levels will be mandated to begin within the next few years. Substantial capital investments are currently anticipated to meet the

new specifications and some regional refiners may elect to shut down facilities rather than make the investments required to achieve compliance.

This memorandum is being e-mailed to you with a "hard copy" with Exhibit "A" to follow by overnight mail. Do not hesitate to give me a call if you have any questions.

cc: Carter Montgomery

Horace Hobbs